

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.236 OF 1997

State

by Food Inspector

Ammapettai Panchayat Union .. Appellant

-Vs-

Subramaniam .. Respondent

This criminal appeal is preferred under Section 378 Cr.P.C. against the judgment passed by the learned Judicial Magistrate, Bhavani in C.C.No.59 of 1994 dated 19.7.1995.

!For Appellant : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

^For Respondent : Mr.B.Kumarasamy
for Mr.N.Manoharan

:JUDGMENT

The appeal is filed by the State challenging the judgment of the learned Judicial Magistrate, Bhavani made in C.C.No.59/94 dated 19.7.199 5 acquitting the respondent herein from the charges under Section 7(1) and 16(1)(a)(i) r/w Section 2(1a)(a)(b) and (m) and Rule 23 of the Prevention of Food Adulteration Act.

2. The case as put forth before the lower court can be stated as follows:

On 25.12.1993 at about 11.00 a.m., P.W.1, Gopalarathinam, who was the Food Inspector attached to Ammapettai Panchayat Union, proceeded along with his assistant P.W.2, Sengodan to "Sani Sandai" for taking food sample. They found that the respondent/accused was selling Redgram Dal in a public place and P.W.1 introduced himself. After filling up Form 6 under Ex.P.1 and after due notice to the accused, he purchased 750 grams of "Redgram Dal" by paying the consideration therefor under Ex.P.2 receipt and the samples were properly sealed, part of which were sent to local health centre, while the rest of the samples were sent for analysis at Chennai under due acknowledgement. On analysis, a report was received, which was marked as Ex.P.14, where the Analyst gave his opinion that he found artificial colouring matter and the same was prohibited and it contains coal tar food colour : Tartrazine. On

receipt of the report, the Food Inspector lodged a complaint as one he has committed an offence punishable under Section 7(i) and 16(1)(a)(i) r/w 2(ia)(a)(b) and (m) and Rule 23 of the Prevention of Food Adulteration Act.

3. In order to prove its case, the prosecution examined three witnesses and marked 16 exhibits. The accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses. The accused/respondent flatly denied the same as false. No defence witness was examined. After considering the rival submissions and scrutiny of the materials available, the court below has found that he was not guilty of any one of the charges levelled against him and acquitted him. Hence, aggrieved by the said Judgment, the State has preferred this appeal.

4. The learned Government Advocate inter-alia raised only one point which the lower court failed to consider and has acquitted the accused. According to him, after following procedural formalities, the samples were taken and were sent for analysis. After proper analysis, Ex.P.14 report has been filed. The Analyst in his report under Ex.P.1 4 in the remarks column has stated as follows:

□As per clause A.18.06 in Appendix B to the P.F.A. Rules 1955, Food grains meant for human consumption shall be free from artificial colouring matter. As per Rule 23 of the PFA Rules 1955 the addition of a colouring matter to any article of food except as specially permitted by these Rules, is prohibited.□

Thus, from the opinion of the Analyst, it would be quite evident that the sample was adulterated, and hence, in view of the same, the lower court should have found him guilty and convicted him. Hence, the appeal has got to be allowed.

5. Countering to the above contentions of the appellant, the learned counsel for the respondent/accused would urge that the lower court due to lack of evidence to show that the food contained colouring matter, which was prohibited or adulterated or injurious to health, was perfectly correct in finding that the prosecution has not proved the case and that the accused is entitled to for an acquittal.

6. After considering the rival submissions and scrutiny of the materials available, this Court is of the considered view that there is no substance in this appeal.

7. P.W.1, Food Inspector has taken samples of Redgram Dal as found in the evidence and has sent the same for analysis. The Analyst has given Ex.P.14 report. What are all stated by him in Ex.P.14 Report was that the sample was adulterated, since it contains a coal tar food colour □Tartrazine□. He further added in his report that the same was prohibited. The learned counsel for the appellant would urge that a reading of Rules 23 and 28 of the Prevention of Food Adulteration Rules, 1955 would clearly indicate that this colouring matter of Tartrazine was one permitted but not prohibited, and hence, the opinion given by the Analyst has got to be rejected. Under the stated circumstances, the lower court has pointed out that the Analyst should have been examined by the prosecution to prove that how he found the same as prohibited one and adulterated also. Hence, the Court is unable to notice anything to interfere in the judgment of the court below and the same has got to be sustained.

8. In the result, this criminal appeal is dismissed, confirming the judgment of the lower court.

Index : Yes

Internet : Yes

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To

1. The Judicial Magistrate, Bhavani

2. The Judicial Magistrate, Bhavani

through the Chief Judicial Magistrate, Periyar Dist.,
at Erode

3. The Principal Sessions Judge, Periyar District at Erode

4. The Public Prosecutor, High Court, Madras

5. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl. side)
High Court, Madras

6. The Food Inspector, Ammapettai Panchayat Union

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